IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6270 OF 2005

M/s. Noorbagh Apartment Condominium ..Petitioner.

Versus

1. Pune Municipal Corporation & Ors. ..Respondents.

Mr. S.D. Modak for the Petitioner.
Ms. Akhila S.Kaushik for the Respondent Nos. 2 & 3.
Mr. R.M.Pethe for R.G.Ketkar for Respondent No.1.

CORAM : S. A. BOBDE, J.
DATED : 17TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Ms. Kaushik, Advocate for the respondents Nos. 2 and 3 and Mr. Pethe, Advocate for respondent No.1 appear and waive service of rule. Heard by consent.

2. The petitioner Society has challenged the orders of both the courts below concurrently rejecting the petitioner's application for injunction and restraining the defendants from carrying out certain changes in their flat. The appellate court has found that the renovation has been done in accordance with the permission granted by the Corporation. The change which is permitted by the Corporation is removal of

two internal walls in between the living room and other rooms which are merely constructed in bricks and do not appear to be a load-bearing. The learned counsel for the petitioner submitted that the change is without permission of the petitioner society in view of the bye-law No.41, which reads as follows:

> 41. Use of Family Units - internal changes:-
>
> (1) All units shall be utilised for residential purpose only.
>
> (2) An Owner shall not make any structural modifications or alterations in his unit or installations located there in without previously notifying the Association in writing, through the President of the Board if no manager is employed. The Association shall have the obligation to answer within thirty days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification, alteration or installation.

3. This submission is opposed by the learned counsel for the corporation and the respondents Nos.

2 and 3 on the ground that a certain area is permitted for non-residential use such as professional office. I find that the appellate court has clarified this matter and has directed that the respondent Nos.2 and 3 shall not carry out any renovation except that which is approved by the corporation. The court has further directed that that much area should be used for professional office only which is allowed in the sanctioned plan. The next contention based on the aforesaid bye-laws is that sub-clause (2) of the above bye-law, requires previous permission of the petitioner society. On a prima facie reading of the bye-laws, it appears that what is prohibited is strictly modification "without previously notifying the Association". There is undoubtedly, a difference between the requirement to previously notify and the requirement to obtain prior permission.

4. In this view of the matter and having regard to the aforesaid directions given by the appellate court that no area larger than the area permitted by the sanctioned plan, shall be used for non-professional office. I see no reason to interfere.

5. The petition is dismissed. Rule is discharged.

DT. 17.10.05 (S.A.BOBDE,J)

.....